

REMARKS

Applicants note that upon discussion of the August 1, 2005 Official Action with the Examiner's supervisor, it was decided that the amendment of May 24, 2005 should be resubmitted taking into account the deficiency noted in the August 1, 2005 Official Action. Accordingly, the present amendment is the same as the amendment of May 24, 2005 except with respect to claim 7.

The application has been amended to place the application in condition for allowance at the time of the next Official Action.

Claims 1-16 were previously pending in the application. Claim 12 is canceled, leaving claims 1-11 and 13-16 for consideration.

Claims 1, 15 and 16 are rejected as anticipated by HANSSON et al. WO 96/20669. This rejection is respectfully traversed.

Claim 1 is amended to include the subject matter of claim 12 and provides that the elastic member is in the form of a band or thread.

The position set forth in the Official Action as to claim 12 is that the band or thread is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

However, the position set forth in the Official Action is believed untenable for at least the following reason.

First, it has been established that the position of obvious design choice is rebuttable based on evidence that a particular configuration of the claimed invention is significant. See for example MPEP §2144.04(IV)(B) and *In re Dailey* 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

In the present invention, the significance of the particular configuration of the elastic member is to bend the rear portion 7 of the absorbent body into a somewhat parabolic shape as set forth on page 9, lines 24-25. Such shape improves the anatomical fit against a user's body. See for example Figure 2 of the present application wherein the rear portion 7 is bent into a parabolic shape.

HANSSON does not recognize the need to conform the absorbent layer to the shape of the user's body in this particular fashion. Rather, HANSSON only bends the body into a substantially W shape as seen in Figure 4, for example. Accordingly, each of the curves of HANSSON are along the longitudinal axis of the absorbent article of HANSSON. HANSSON does not teach or suggest curving the longitudinal axis itself into a parabolic shape to improve the anatomical fit against the user's body. Accordingly, one of ordinary skill in the art faced with the problem of improving the anatomical fit against the user's body in a direction other than along the longitudinal axis would not look to the teachings of HANSSON to render obvious the claims of the present invention.

Moreover, as seen in Figure 1 of the present invention the elastic member 19 is a band or a thread, that is, a thin strip of elastic. In contrast, element 5 of HANSSON, noted in the Official Action as the elastic member, extends over an entire width of the article as seen in Figure 1 of HANSSON. As disclosed on page 6, lines 30-39 of HANSSON, the absorbent layer 5 is intended, when the sanitary napkin is in use, to receive body fluids and transfer them to the second absorbent layer. The material in the first absorbent layer should have a high instantaneous absorption capacity so that all the body fluids emitted can be completely absorbed in absorbent layer 5 and accommodated therein until the fluid has been able to be conveyed to the second absorbent layer 6 which normally has a lower absorbent speed.

Modifying the elastic member of HANSSON to be a band or thread would not allow the emitted body fluid to be absorbed because there would not be sufficient area to absorb the emitted body fluid. Therefore, such proposed modification would not be obvious.

As the reference does not disclose that which is recited and since any modification of the reference to meet the claim limitations would change the principle of operation of the reference, the reference neither anticipates the claims nor would it be obvious to modify the reference to meet the claim

limitations. Accordingly, claim 1 is believed patentable over the cited prior art.

Claim 15 is amended and provides that the elastic member is placed between the first leg and second leg without overlapping the first and second legs.

As seen in Figure 2 of HANSSON, for example, the elastic member 5 extends over almost the entirety of the article of HANSSON including over the split 14 in absorbent layer 6 (indicated in the Official Action as the legs). HANSSON does not disclose or suggest that the elastic member does not overlap the legs.

As the reference does not disclose that which is recited, the anticipation rejection as to claim 15 is not viable.

Claim 16 provides that a rear portion of the absorbent layer is split into a first leg and a second leg with a gap between the legs having an angle α defined between the first leg and the second leg so that the gap increases in the transverse direction from the center to the rear portion.

HANSSON teaches a slit 14 so that the article of HANSSON can be bent along a longitudinal center line 15. As disclosed on page 7, line 53 through page 8, line 3 of HANSSON, the slit of HANSSON is arranged so that stretching in a direction perpendicular to the slit is resisted. Therefore, there is no movement of the absorbent layer 6 in the transverse direction. This is partly due to liquid permeable layer 2 being less elastic

than the absorbent layer 6 and partly because the edges of the central slit are locked in position against one another whereby the central slit cannot expand at the liquid impermeable layer 2.

Accordingly, as seen in Figure 1 of HANSSON, the distance between the slit 14 at the center of the absorbent article and where the slit ends (left side of Figure 1) is the same. Therefore, the legs of HANSSON have a constant distance between each other, such that any angle between the legs (which appears to be an angle of 0) is constant along the transverse direction of the legs such that HANSSON does not teach that the gap increases in a transverse direction from the center to the rear portion as recited in claim 16.

As the reference does not disclose that which is recited, the anticipation rejection is not viable. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 2-14 are rejected as unpatentable over HANSSON et al. This rejection is respectfully traversed.

Claims 2-14 depend from claim 1 and further define the invention. As set forth above, HANSSON does not disclose or suggest what is recited in claim 1. Accordingly, claims 2-14 are also believed patentable over HANSSON.

In addition, the dependent claims include features not taught or suggested by HANSSON. Claim 2 provides that the elastic member bends the rear portion in a substantially

parabolic shape. Accordingly, not only is there a V shaped portion as shown in Figure 3 of the present invention, but there is also the parabolic shape (see Figure 2) wherein the article is substantially parallel to a longitudinal axis up until point 25 and then begins to curve away from the longitudinal axis in a parabolic shape. HANSSON does not teach or suggest this feature.

In addition, contrary to what is set forth in the Official Action, HANSSON is not capable of meeting this feature. As set forth above with respect to claim 1, the absorbent layer 5 (noted in the Official Action as the elastic layer) extends over an entirety of the article of HANSSON. At best, such elastic member would contract the entire article of HANSSON into a substantially C-shaped article, not a substantially parabolic shape as recited.

Claim 7 provides that the angle α is between 10 and 120°. As set forth above, there does not appear to be any angle (0°) between the legs of HANSSON.

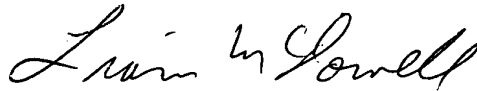
Accordingly, the above-noted claims are believed patentable regardless of the patentability of the claims from which they depend.

In view of the present amendment and the foregoing Remarks, it is believed that the present application has been placed in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. \$1.16 or under 37 C.F.R.\$1.17.

Respectfully submitted,

YOUNG & THOMPSON



Liam McDowell, Reg. No. 44,231
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297

LM/fb